

SERVICE DATE - DECEMBER 5, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34427

BUFFALO & PITTSBURGH RAILROAD, INC. — LEASE AND
OPERATION EXEMPTION — CSX TRANSPORTATION, INC.

Decided: December 4, 2003

By petition filed November 12, 2003, Buffalo & Pittsburgh Railroad, Inc. (BPR or petitioner) seeks an exemption pursuant to 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 to lease and operate a 40.8-mile rail line owned by CSX Transportation, Inc. (CSXT) between milepost 10.4 at Glenshaw and milepost 51.2 at P&W Junction (New Castle), PA.¹ The Board will grant the exemption subject to labor protective conditions.

BACKGROUND

BPR is a Class II rail carrier that owns or operates approximately 280 miles of rail line in New York and Pennsylvania. Petitioner currently operates over a 25-mile portion of the subject line between P&W Junction and Eidenau, PA, and interchanges traffic with CSXT at P&W Junction. Petitioner states that another portion of the line, between Glenshaw and Bakerstown, PA, has not received local service for over 2 years and is the subject of a CSXT notice of exemption to discontinue service. See CSX Transportation, Inc.—Discontinuance of Service Exemption in Allegheny County, PA, STB Docket No. AB-55 (Sub-No. 644X). According to BPR, CSXT notified the Board on November 3, 2003, that it would withdraw the notice of exemption upon consummation of its lease with BPR.

BPR states that, although the subject line handled only 1,200 local carloads during 2002 and 750 local carloads during the first 10 months of 2003, BPR uses the portion of the line between P&W Junction and Eidenau to interchange over 20,000 carloads a year with CSXT. As a locally based carrier, BPR asserts that it has greater economic incentive to develop traffic on the line and rehabilitate it. Because of the low volume of local traffic on the line, petitioner indicates that it will seek state assistance for the rehabilitation work.

¹ On November 21, 2003, BPR filed with the Board an amended petition and labor notice certification clarifying that the milepost at J&W Junction should be MP 51.2, rather than MP 51.0. BPR states that the amended milepost designation will not affect additional employees.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10902, the lease and operation of a rail line by a Class II carrier would require an application to, and authorization by, the Board. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation upon finding that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

An exemption from the prior approval requirements of 49 U.S.C. 10902 is consistent with the standards of 49 U.S.C. 10502. Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption from the application process will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)], and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of this transaction is not needed to protect shippers from the abuse of market power. Because a portion of the line has been inactive for over 2 years, petitioner's lease and operation of the line will provide potential customers with transportation alternatives. And as a locally based operator, BPR should be able to provide as good or better service to existing local shippers on the line, as BPR will seek to develop and increase local traffic on the line. Given the market power finding, it is not necessary to determine whether the transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of adversely affected employees. Section 10902(d) provides for labor protection in line acquisitions by Class II rail carriers. As a condition to this exemption, any employees affected by the acquisition will be protected as required by section 10902(d), subject to the standards and procedures established in Wisconsin Central Ltd.-Acquisition Exem. Union Pac. RR, 2 S.T.B. 218 (1997), rev'd in part sub nom. Association of American Railroads v. STB, 162 F.3d 101 (D.C. Cir. 1998).² As required by 49 CFR 1121.4(h), BPR has certified to the Board that it has posted a notice of the transaction at the workplace of potentially affected employees and served the same on the national organizations representing them.³

² In its petition, BPR agrees to these labor protective conditions.

³ In a letter filed November 25, 2003, petitioner states that the line description in the November 21 amended labor notice was overly expansive, by approximately 3 miles, based on earlier
(continued...)

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in a significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(1) because it will not substantially alter railroad properties.

In requesting expedited consideration, petitioner asks that the exemption be effective on the earliest date possible, i.e., by December 23, 2003, 60 days following its filing of the labor notice certification.⁴ BPR states that expedited closing of the transaction will aid operational logistics and save transaction costs. Petitioner also asserts that it does not expect any opposition to the transaction. The request is reasonable. Accordingly, the exemption will be effective on December 23, 2003, rather than the normal 30 days after service of the decision and publication in the Federal Register.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the above-described transaction is exempted from the prior approval requirements of 49 U.S.C. 10902, subject to the employee protective conditions implementing 49 U.S.C. 10902(d) as provided in this decision.
2. Notice will be published in the Federal Register on December 10, 2003.
3. The exemption will become effective on December 23, 2003.

³(...continued)

discussions between the parties. BPR asserts, however, that there should be no prejudice from the change because the notice covered all of the trackage as described in the exemption request.

⁴ BPR's original certification to the Board was filed on October 24, 2003. As indicated above, BPR posted an amended labor notice on November 19, 2003, correcting its milepost description at P&W Junction. BPR's amended certification was filed with the Board on November 21, 2003. Although BPR requests the Board to waive a portion of the 60-day notice period, a waiver is not necessary in view of the minor change in mileage.

4. Petitions to stay must be filed by December 15, 2003. Petitions to reopen must be filed by December 18, 2003.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary